

133 FERC ¶ 61,242
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 20, 2010

In Reply Refer To:
Transcontinental Gas Pipe Line
Company, LLC
Docket No. RP11-1510-000

Transcontinental Gas Pipe Line Company, LLC
P.O. Box 1396
Houston, TX 77251-1396

Attention: Scott C. Turkington, Director, Rates & Regulatory

Reference: Order Granting Waiver

Dear Mr. Turkington:

1. On November 10, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed a request for waiver of the Commission's capacity release regulations in order to permit a permanent capacity release transaction to occur. Specifically, Transco requests waiver of sections 284.8(b)(2) and 284.8(e) of the Commission's regulations¹ to allow a negotiated rate transportation service agreement to be permanently released to a pre-arranged shipper, at a negotiated rate paid by the releasing shipper which is in excess of the maximum tariff rate. Transco requests the Commission grant the waiver on or before February 1, 2011, so that the parties may effectuate the applicable capacity release transaction by April 1, 2011. Transco further requests the Commission grant any and all waivers of its regulations necessary to permit this capacity release to occur. As discussed below, the Commission grants waiver of sections 284.8(b)(2) and 284.8(e), effective the date of this order.

2. Public notice of the filing was issued on November 15, 2010. Interventions and protests were due on or before November 22, 2010, as provided in section 154.210 of the Commission's regulations.² Pursuant to Rule 214,³ all timely motions to intervene and

¹ 18 C.F.R. §§ 284.8(b)(2), 284.8(e) (2010).

² 18 C.F.R. § 154.210 (2010).

³ 18 C.F.R. § 385.214 (2010).

any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments or protests were filed.

3. Transco states that it has a negotiated service agreement with Fountain Inn Natural Gas System (Fountain Inn), dated May 4, 2001, as amended, for Rate Schedule FT firm transportation service under Transco's Sundance Expansion Project. The negotiated rate is above Transco's existing maximum recourse rate for the service in question. Transco states that this agreement has a Transportation Contract Quantity (TCQ) of 3,500 dekatherms (Dth) per day. The agreement continues in effect until May 1, 2017 and thereafter until terminated by seller or buyer upon at least one year of notice.

4. Transco asserts that Fountain Inn reached an agreement to release permanently the entire TCQ of 3,500 Dth per day to Patriots Energy Group (PEG). Transco states that PEG is agreeable to accepting all the terms and conditions of the permanent release. These include that: (1) Transco will permanently relieve Fountain Inn of liability for the entire TCQ of 3,500 Dth per day of capacity being released; and (2) PEG will "permanently assume liability for the entire TCQ of 3,500 Dth per day at the negotiated rate under the service agreement, thereby leaving Transco economically indifferent to the permanent release."⁴ Following receipt of the waiver requested in the instant filing, Transco states that it will effectuate the instant capacity release transaction in accordance with section 42 of the General Terms and Conditions (GT&C) of its FERC gas tariff, and that it will then file the negotiated rate agreement with the Commission for approval.

5. Specifically, Transco requests that the Commission waive sections 284.8(b)(2) and 284.8(e) of its regulations to permit the instant pre-arranged permanent capacity release to be treated similar to pre-arranged maximum rate releases, which can be implemented without posting for bids from other shippers, and to allow the release to occur even though it is a release at a negotiated rate above Transco's maximum tariff rate. Transco avers that the Commission has previously granted such waivers under similar circumstances.⁵

⁴ November 10, 2010 Transmittal Letter at 1 and 2.

⁵ Transco Transmittal Letter at 2 (citing *Transcontinental Gas Pipe Line Corp.*, 113 FERC ¶ 61,331 (2005) (2005 *Transco*); *Northern Natural Gas Co.*, 117 FERC ¶ 61,354 (2006) (*Northern Natural*); *Northern Natural Gas Co.*, 125 FERC ¶ 61,149 (2008); *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,086 (2009) (2009 *Transco*)).

6. The Commission only requires a pipeline to allow a permanent capacity release, where the pipeline will be financially indifferent to the release.⁶ Where, as here, the releasing shipper is paying a negotiated rate in excess of the maximum rate, waiver of the maximum rate is necessary to render the pipeline financially indifferent to the release. Therefore, denial of a waiver request in these circumstances would unnecessarily inhibit the use of permanent releases to transfer capacity which the releasing shipper no longer needs to a shipper that does need it.⁷

7. The Commission finds that here, where Fountain Inn proposes to permanently release long term capacity to a replacement shipper found acceptable by Transco and willing to pay the same negotiated rate as Fountain Inn, waiver of the applicable maximum rate cap is appropriate. First, all parties (releasing shipper, replacement shipper and pipeline) agree to the transaction. Second, no other shipper has protested that Fountain Inn's choice of PEG as its replacement shipper was unduly discriminatory. Third, there is no reason to post this release for third parties to submit higher bids, because the Commission would not waive the applicable maximum rate to permit a release at a rate in excess of the negotiated rate the releasing shipper is currently paying. The Commission is only willing to waive the maximum rate as necessary to render the pipeline economically indifferent to the permanent release, and thereby avoid inhibiting the permanent release of the capacity. Allowing the release to take place at an even higher negotiated rate than the releasing shipper is currently paying is unnecessary for that purpose.⁸

8. In the instant filing, Transco has requested waiver of all the Commission's regulations that the Commission deems necessary to permit the subject capacity release to occur. Finding good cause, the Commission in this order grants waiver of section 284.8(b)(2) of the Commission's regulations in order to permit the instant permanent release to take place at the same negotiated rate as Fountain Inn is currently paying. In addition, section 284.8(e) of the Commission's regulations states in part that, "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release."

⁶ *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-312 (1992) (*El Paso*); *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092 (1998); *Midcontinent Express Pipeline LLC; Enogex Inc.*, 124 FERC ¶ 61,089, at P 123 (2008).

⁷ *E.g.*, 2009 *Transco*, 126 FERC ¶ 61,086 at P 7.

⁸ *Id.* P 8.

For the reasons discussed above, the Commission also finds good cause to grant waiver of this regulation.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.